IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 634 OF 2005.
WITH
CRIMINAL WRIT PETITION NO. 635 OF 2005.

Popat Shivram Sonawane. ... Petitioner.
(In both the petitions)

Versus.

Sheventabai Popat Sonawane & anr. ... Respondents.
(In both the petitions)

Shri Kishore Patil holding for Shri P.N.Joshi for the Petitioner.

Ms.Pritam Tendolkar holding for Shri Karnik for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 11th October, 2006.

P.C.:

1. Rule. The Advocates appearing for the Respondents waive service. Taken up for hearing forthwith.

2. The Petitioner is the husband and the 1st Respondent is the wife. The 1st Respondent initially filed an application for maintenance under section 125 of the Code of Criminal Procedure, 1973 in the year 1968. Initially the maintenance at the rate of Rs.75/- per month was granted. In the year 1996 the said amount was enhanced to Rs.300/- per month. In the year 2001, an application was made for further enhancement of the maintenance amount by invoking the provisions of

section 127 of the said Code. By order dated 31st October 2002, the learned Judicial Magistrate First Class enhanced the maintenance amount to Rs.500/- per month. The Petitioner and the 1st Respondent filed separate Revision Applications before the Sessions Court which have been decided by the impugned order dated 6th May 2005. Since there were two Revision Applications filed before the Sessions Court, the Petitioner has filed the two separate writ petitions. The Revision Application filed by the Petitioner-husband was rejected and the Revision Application filed by the 1st Respondent- wife was allowed. The learned Additional Sessions Judge, by the impugned order, directed that the maintenance amount payable by the Petitioner shall be Rs.1500/- from 15th December 2001 i.e from the date of filing of the application under section 127(1) of the said Code.

3. The learned Advocate for the Petitioner-husband submitted that the present age of the Petitioner is about 70 years and he survives on the meagre pension amount. He submitted that the Petitioner has become handicapped and he requires substantial amount for his medical treatment. He submitted that the pension amount is not more than Rs.3500/- per month and therefore, it is impossible for

the Petitioner to pay the amount. He submitted that in any case the enhancement could have been granted only from the date of the order.

4. The learned Counsel appearing for the 1st Respondent supported the impugned judgment and order and pointed out that the Petitioner is holding large agricultural lands and is receiving income therefrom at the rate of Rs.6000/- per year. The learned Counsel for the 1st Respondent on instructions stated that on the basis of the impugned order, substantial amount has been recovered and therefore, she will not file any proceedings for recovery against the Petitioner for claiming maintenance at the enhanced rate for the period upto 31st August 2006 and she will file proceedings for recovery at enhanced rate only if the same remains unpaid from September 2006 onwards.

5. I have considered the submissions. The certificate on record shows that the Petitioner is receiving pension of Rs.3887/- per month. No case is made out by the Petitioner in his written statement that besides the 1st Respondent there is any other person who is depending on his income. The Courts below have referred to the certified copies of the 7x12 extracts which show that the Petitioner is holding

agricultural land admeasuring 2 H 60 R with pot kharaba land admeasuring 23 R. The 7x12 extract shows that there is a well in the agricultural land with an electric motor installed thereon. Considering the pension amount of Rs.3887/- and the minimum agricultural income which the Petitioner must be fetching, the Sessions Court has enhanced the maintenance amount to Rs.1500/- instead of Rs.500/- per month. The Revisional Court has noted that the minimum income from the agricultural land must be Rs.6000/- per year. There is nothing on record to show that except for the Petitioner and 1st Respondent any one else is dependent upon the income of the Petitioner. The average monthly income of the Petitioner can be safely taken to be Rs.4300/- to Rs.4400/- per month. Considering these factual aspects it is very difficult to find fault with the maintenance of Rs.1500/- per month fixed by the Revisional Court. There is some substance in the submission of the learned Advocate for the Petitioner that the maintenance amount should not have been made payable from the date of the application and it should have been at the highest from the date of the order. However, as stated above, a statement has been made by the 1st Respondent that no further proceedings will be taken out or will be prosecuted for recovery of maintenance amount upto the period ending

with 31st August 2006. The said statement is accepted. In view of the said statement, it is not necessary to modify that part of the impugned order by which direction is issued for making payment of the maintenance amount from the date of the application.

6. Hence the Writ Petitions are disposed of by the following order:

(i) The statement made by the 1st Respondent that no steps will be hereafter taken to recover the amount of maintenance payable as per the impugned order for the period upto 31st August 2006 is accepted.

(ii) In view of the above statement, if the impugned order is not complied with by the Petitioner with effect from September 2006, it will be open for the 1st Respondent to take out proceeding for recovery of maintenance amount for the period commencing from September 2006.

(iii) Subject to what is stated above the impugned order is confirmed and the writ petitions are rejected.

(iv) Rule is accordingly discharged.

Judge.